IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.279 of 2004.

Judgement reserved on: 27.8.2007.

Date of decision: ***October 04, 2007.***

M/s.Gurnarain Suri & Co. ….. Appellant.

Vs.

H.P.State Co-operative Bank Ltd. & Anr. …. Respondents.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] Yes

For the Appellant : Mr.K.D.Sood, Advocate.

For the Respondents : Mr.Surender Sharma with Mr.Paresh Sharma, Advocate.

Kuldip Singh, Judge.

This appeal is directed against the judgment, decree dated 26.3.2004, passed by learned District Judge, Bilaspur, H.P., in Civil Appeal No.92 of 2001 setting aside the judgment, decree dated 19.3.2001 passed by learned Senior Sub Judge, Bilaspur in case No.74-1 of 1998.

2. The facts, in brief, are that the appellant filed a suit for declaration that the order dated 24.6.1991 passed by Collector Sadar, Sub Division, Bilaspur and order dated 12.3.1997 passed by Divisional Commissioner, Mandi are void and not binding on appellant inasmuch as the H.P. Public Premises and Land (Eviction and Rent Recovery) Act, 1971 (for short 'Public Premises Act') is not

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Whether the reporters of the local papers may be allowed to see the Judgment? Yes

applicable, the appellant is a tenant in the suit premises. A decree for permanent prohibitory injunction restraining the respondents from interfering in possession of the appellant has also been prayed. In case appellant is dispossessed from the suit premises during the pendency of the suit then possession may also be ordered to be restored to the respondents.

3. The further facts are that appellant is a tenant under respondents of the front portion of the premises i.e. Shop No.50-A since 1978 on the ground floor. The respondents started eviction proceedings against the appellant under the Public Premises Act and the Collector Sadar, Sub Division, Bilaspur on 24.6.1991 passed the ejectment order against the appellant. The appeal filed by the appellant was dismissed by Divisional Commissioner, Mandi on 12.3.1997. According to appellant, the H.P.Urban Rent Control Act, 1987 (for short 'Rent Act') has precedence over the Public Premises Act and the orders dated 24.6.1991 and 12.3.1997 are null and void and not binding on the appellant. According to the appellant, the premises in dispute is not public premises under the Public Premises Act. The respondents filed written statement and took preliminary objections of maintainability of the suit, jurisdiction of the civil Court to entertain the suit, the matter regarding the status of the appellant has been decided under the Public Premises Act, therefore, no injunction can be granted and the suit has not been properly instituted. On merits, relationship of landlord and tenant has been denied. It has been submitted that appellant is in unauthorized occupation of the premises since 1.7.1987 as its lease has expired on 30.6.1987. The

passing of the orders by Collector, Sadar and Divisional Commissioner has been admitted. It has been submitted that up to July 1998 an amount of Rs.85,423.20 on account of arrears of rent / damages and interest as per decisions of Collector, Sadar and Divisional Commissioner are due to respondents from appellant. The Rent Act is not applicable. The learned Senior Sub Judge on 19.3.2001 decreed the suit by holding that appellant is a tenant in the premises and the impugned orders are wrong and illegal. The respondents filed appeal against the decision dated 19.3.2001 which has been allowed by learned District Judge by impugned judgment, decree, which have been assailed by the appellant in this Court. The appeal has been admitted on the following substantial question of law:-

> *Whether the provisions of H.P. Public Premises and Land (Eviction and Rent Recovery) Act, 1971 or the provisions of H.P. Urban Rent Control Act, 1987 would apply to the premises in dispute?*

4. I have heard the learned counsel for the parties and gone through the record. The learned counsel for the appellant has submitted that the appellant is a tenant under the respondents and its tenancy is governed by the Rent Act, per contra, the learned counsel for the respondents has submitted that appellant is an unauthorized occupant in the premises, the lease has expired on 30.6.1987 and since 1.7.1987 the appellant is an unauthorized occupant in the premises. The occupation of appellant in the premises is governed by the Public Premises Act.

5. The 'Public Premises' has been defined in Clause (e) of Section 2 of Public Premises Act and is as follows:-

> "***2. Definitions.-*** In this Act, unless the context otherwise requires.-
>
> (a) xxx xxx xxx
>
> (b) xxx xxx xxx
>
> (c) xxx xxx xxx
>
> (d) xxx xxx xxx
>
> (e) "public premises" means any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the State Government and includes any premises belonging to, or taken on lease by, or on behalf of-
>
> (i) xxx xxx
>
> (ii) xxx xxx
>
> (iii) xxx xxx
>
> (iv) any co-operative society registered or deemed to have been registered under the H.P. Cooperative Societies Act, 1968."

There is no dispute that respondent No.1 is a Co-operative society under the H.P. Co-operative Societies Act, 1968. The parties are also not at issue that the premises in dispute is owned by respondent No.1 and it was given on lease to appellant which has expired on 30.6.1987. The question is whether the occupation of appellant in the premises in dispute is governed by the Public Premises Act or the Rent Act.

6. The Rent Act has been enacted for the control of rent and eviction within the limits of urban areas in State of Himachal Pradesh. The Public Premises Act has been enacted to provide for the eviction of unauthorized occupants from public premises and for

certain incidental matters. The applicability of Rent Act is limited to urban areas which has been defined in Clause (k) of Section 2 of the Rent Act. The Rent Act was initially made applicable to existing urban areas and later on to any area declared by the State Government, by notification, to be an urban area for the purposes of Rent Act. The Public Premises Act, on the contrary, will apply to 'public premises' defined in Clause (e) of the Public Premises Act. As per sub-section (2) of Section 3 of the Rent Act said Act is not applicable to any building or rented land owned by Government and under sub-section (1) of Section 3 the Government has power to exempt the applicability of the Rent Act to any particular building or rented land or any class of buildings or rented lands. The legislative intention for Public Premises Act is to apply said Act to Government buildings, lands and also to other bodies mentioned in Clause (e) of Section 2 of the Public Premises Act and as far as Rent Act is concerned, the intention is not to apply said Act to the Government buildings, lands and such other buildings and lands which are exempted under Section 3 of the Rent Act by the Government. It is, thus, clear that under Clause (e) of Section 2 of the Public Premises Act, the said Act is applicable to buildings and lands owned by Co-operative Societies. No doubt, unless exemption is granted under Section 3 of the Rent Act then the building and land owned by Co-operative Society prima facie shall be covered by the Rent Act also. But once the legislature has made it clear that Public Premises Act by virtue of Clause (e) of Section 2 is applicable to the buildings and lands of Co-operative Societies then it can be legitimately inferred that buildings and lands

of Co-operative societies will not be governed by Rent Act. It cannot be the intention of the legislature to enact conflicting enactments covering the same field. In any case harmonious interpretation is to be given to the two enactments.

7. The learned counsel for the appellant has contended that Rent Act being later enactment will over ride Public Premises Act an earlier enactment and for this contention he has relied ***Shri Sarwan Singh and another*** *Versus* ***Shri Kasturi Lal [(1977) 1 SCC 750]***. In *Sarwan Singh's case (supra),* the question was whether the provisions of Slum Area (Improvement and Clearance) Act, 1956 will over ride those of Delhi Rent Control Act of 1958. If they do so, no person can institute any suit or proceeding for the eviction of a tenant of any building or land in slum area without the previous permission in writing of the competent authority. In that case, the Apex Court after noticing some of the provisions of both the Acts in Para-23 has held:-

> "The argument of implied repeal has also no substance in it because our reason for according priority to the provisions of the Delhi Rent Act is not that the Slum Clearance Act stands impliedly repealed *pro tanto.* ***Bearing in mind the language of the two laws, their object and purpose and the fact that one of them is later in point of time*** and was enacted with the knowledge of the *non-abstante* clauses in the earlier law, we have come to the conclusion that the provisions of Section 14A and Chapter IIIA of the Rent Control Act must prevail over those contained in Sections 19 and 39 of the Slum Clearance Act."

The Apex Court, keeping in view the various provisions of the two Acts, their object and purpose and the fact that one of them is later in point of time and was enacted with the knowledge of *non-obstante* clauses in the earlier law came to the conclusion that Rent Control Act must prevail over the Slum Clearance Act. The Apex Court has not held that simply because Rent Act is later in time, therefore, it will over-ride the Slum Clearance Act, hence the contention of the learned counsel for the appellant that simply because Rent Act is later in time will over-ride the Public Premises Act is rejected.

8. The learned counsel for the appellant has also relied ***Sanwarmal Kejriwal*** *Versus* ***Vishwa Co-operative Housing Society Ltd. And others [AIR 1990 SC 1563]*** in support of his plea that Rent Act will apply in the present case and not the Public Premises Act. In *Sanwarmal Kejriwal's case (supra),* the question was whether a licensee occupying the flat in a tenant co-partnership society be evicted there from under sub-section (1) of Section 91 of Maharashtra Co-operative Societies Act, 1960 notwithstanding protection extended by Section 15A of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947. The contention of the appellant before the Apex Court in that case was that even if it is deemed that the relationship was of a licensor and a licensee under the lease, since he was in actual occupation and possession of the flat in question under a subsisting licence right from 1957 to 1.2.1973 he was a statutory tenant under Section 15A of the Rent Act and was therefore, entitled to protection from eviction till a competent Court granted eviction on any of the grounds set out in Sections 12 or 13 of the Rent

Act. The Section 15A was inserted by amending Act 17 of 1973 which in certain situations confers the status of deemed tenant to a licensee. In Para-21 of the Judgment, the Apex Court has held as follows:-

> "…In the present case the appellant seeks protection of the Rent act since he is a deemed tenant under Section 15A read with S.5(4A) and S.5(11)(bb) of the Rent Act. The status of a tenant is conferred on him by law as the legislature desired to extend the protection of the Rent Act to such licensees. Rights which do not flow from contracts but are conferred by law such as the Rent Act, must, we think, be determined by the machinery, if any, provided by the law conferring the right."

In the case in hand, there is no provision in the Rent Act that a licensee under the Public Premises Act would become a tenant in certain situation, hence *Sanwarmal Kejriwal's case (supra)* is not applicable in the facts and circumstances of the present case.

9. The purpose of Public Premises Act and Rent Act is not entirely the same. The Public Premises Act is special law with respect to eviction and occupation of public premises whereas Rent Act has been enacted for the control of rent and evictions within the limits of urban areas. The Public Premises Act in its own field is special Act. In ***Allahabad Bank*** *Versus* ***Canara Bank and another [(2000) 4 SCC 406],*** the Supreme Court in Para-39 has held as follows:-

> "There can be a situation in law where the same statute is treated as a special statute vis-à-vis one

legislation and again as a general statute vis-à-vis yet another legislation. Such situations do arise as held in *LIC of India v. D.J. Bahadur [(1981) 1 SCC 315: 1981 SCC (L&S) 111: AIR 1980 SC 2181].* It was there observed:

> '….for certain cases, an Act may be general and for certain other purposes, it may be special and the court cannot blur a distinction when dealing with the finer points of law'.
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> **For example, a Rent Control Act may be a special statute as compared to the Code of Civil Procedure. But vis-à-vis an Act permitting eviction from public premises or some special class of buildings, the Rent Control Act may be a general statute.** In fact in *Damji Valji Shah v. LIC of India [AIR 1966 SC 135: (1965) 3 SCR 665]* (already referred to), this Court has observed that vis-à-vis the LIC Act, 1956, the *Companies Act*, 1956 can be treated as a general stature. This is clear from Para-19 of that judgment. It was observed:-
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> > 'Further, the provisions of the special Act, i.e., the LIC Act, will override the provisions of the general Act, viz., the Companies Act which is an Act relating to companies in general.' (emphasis supplied).
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> Thus, some High Courts rightly treated the Companies Act as a general statute, and the RDB Act as a special stature overriding the general statute."

Thus, as against Rent Act, Public Premises Act is special law and it will over-ride the Rent Act.

10. The applicability of the Public Premises Act and Rent Act came up before Division Bench of this Court in ***Amarjeet Singh*** *Versus* ***State of H.P. and others [2000 (1) Shim.L.C. 154]*** and in Para-8 this Court has held as follows:-

> "Coming to the question of relative applicability of the provisions of the Public Premises Act, 1971 and H.P. Urban Rent Control Act, 1987, it has to be observed that though the H.P. Urban Rent Control Act, 1987 applies to all the tenancies except in respect of any rented building of land owned by the Government and there is no specific notification exempting from the provisions of the Act, the building or land owned by the Co-operative Society as such, at the most it would lead to the position that the two enactments may under some given circumstances where there has been a proper termination of the tenancy within the meaning of Public Premises Act, 1971 as well as H.P. Urban Rent Control Act, 1987, both Acts may over-lap in their application. There is no non-*obstante* clause in either of the legislations, excluding the applicability of the other, though the Rent Control Act provides that no tenant can be evicted except in accordance with the provisions of the Rent Control Act, 1987. But as long as the applicability of 1971 Act is not excluded, and the provisions of Section 3 of the Public Premises Act, 1971 are satisfied in a given case, in our view, the 1971 Act being a special legislation alone would apply to a given case wherever it is found applicable. The H.P. Urban Rent Control Act, 1987 applies to all tenancies in respect of all buildings irrespective of the ownership of the building to be that of an individual or the State or

any specified State undertaking, whereas the provisions of Public Premises Act, 1971 apply specifically and specially only in respect of “Public Premises” as defined under the said Act. It is in this context that the two decisions of the apex Court become significant and the principles laid down therein become relevant. The decision reported in *(1980) 4 Supreme Court Cases 435 (supra)* considered the relative applicability of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and the Delhi Rent Control Act, 1958. Like-wise the decision reported in *(1990) 4 Supreme Court Cases 406 (supra)* considered the relative applicability of the very same provisions. It has been held in the latter decision after elaborate consideration of the case law and earlier decisions noticed above that where two enactments of the same legislature fall under the same legislative list, the question as to which enactment will override the other in case of conflict of laws will have to be determined on the basis of principles of statutory interpretation with particular reference and having regard to the purpose policy and legislative intent of the two enactments, also. Viewed thus, in our view, having regard to the purpose, policy and legislative intent that in respect of getting the unauthorized occupant of the public premises evicted expeditiously and summarily, a special procedure is envisaged and enacted under the Public Premises Act, 1971. Therefore, it is that law, as a special law, would prevail and be applicable to a case concerned and it is only in respect of matters not covered by the said State law or that if at all if there is any vacuum left in the

> provisions of 1971 Act in respect of any area, the question of falling back on or applying the provisions of the H.P. Urban Rent Control Act, 1987 will arise. In the case on hand, since the two statutory authorities have concurrently held that the petitioner committed default which operated as defeasance clause to put an end to his tenancy and that his tenancy has been lawfully terminated also and thereby he rendered himself to be an "unathorized occupant" under Section 3 of the Act, 1971, there is no scope or possibility or justification to exclude the applicability of the Public Premises Act, 1971 to the case on hand at any rate. The fact that at one stage the Rent Control Court was moved is no estoppel against the statute. Therefore, it is not given to the petitioner to fall back upon and claim protection engrafted in the Himachal Pradesh Urban Rent Control Act, 1987 to the case on hand."

11. In *Amarjeet Singh's case (supra),* one of the grievance of the petitioner was against the notice dated 22.2.1994 and another notice dated 22.9.1994 issued by the society under Section 106 of the Transfer of Property Act for terminating tenancy of the petitioner and calling him to surrender the possession on or before 1.11.1994. On those facts this Court has held that Public Premises Act would apply for evicting unauthorized occupant in view of the special procedure provided in said Act. In the present case, the lease of appellant has expired. The Collector Sadar and Divisional Commissioner have already passed the ejectment orders under the Public Premises Act which is special Act, as noticed above. Therefore, in the present case also Public Premises Act will apply instead of Rent Act. The appellant

has failed to make out any case for interference. The substantial question of law is answered against the appellant.

12. The result of above discussion, the appeal fails and is dismissed. No costs.

October 04, 2007. ***(Kuldip Singh)***
(soni) ***Judge.***